

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 11-40

March 18, 2011

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Unilateral Cessation of Dues-Checkoff Following Expiration of Collective-Bargaining Agreement

In Bethlehem Steel,¹ the Board held that union-security and dues-checkoff arrangements, unlike most terms and conditions of employment, do not survive expiration of a collective-bargaining agreement. The Board reasoned that unilateral cessation of union security after contract expiration was not only lawful, but mandatory, because union membership cannot be made a condition of employment except under a “contract which conforms to the proviso to Section 8(a)(3).”² The Board found that “similar considerations” applied to dues-checkoff provisions, because they “implemented the union-security provisions.”³ In a later decision, the Board also based the checkoff exception from the unilateral change doctrine upon Section 302(c)(4), which permits checkoff only if “the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner[.]”⁴

The Ninth Circuit has twice vacated and remanded Board decisions in Hacienda Resort Hotel & Casino (Hacienda I and Hacienda II) on the ground that the Board had not articulated a comprehensible rationale for excluding dues-checkoff from the

¹ Bethlehem Steel Co. (Shipbuilding Div.), 136 NLRB 1500 (1962), enf. denied on other grounds 320 F.2d 615 (3d. Cir. 1963), cert. denied 375 U.S. 984 (1964).

² Id. at 1502. (Emphasis added.)

³ Id. The Board also relied upon a subsidiary rationale for exempting checkoff from the unilateral change doctrine in the absence of an agreement: that the language of the contract (“so long as this Agreement remains in effect”) linked the checkoff obligation with the duration of the contract. Id.

⁴ See Hudson Chemical Co., 258 NLRB 152, 157 (1981) (adopting ALJ decision without comment). See also Litton Financial Printing Div. v. NLRB, 501 U.S. 190, 199 (1991), (“[I]t is the Board’s view” that checkoff does not survive contract expiration “because of statutory provisions which permit these obligations only when specified by the express terms of a collective-bargaining agreement,” including Section 302(c)(4)).

unilateral change doctrine in a right-to-work state.⁵ On remand in Hacienda III,⁶ the four members of the Board eligible to participate deadlocked, reaching different conclusions reflected in their separate opinions. Chairman Liebman and Member Pearce in their opinion observed that “the Board has never provided an adequate statutory or policy justification for the holding in Bethlehem Steel excluding dues-checkoff from the unilateral change doctrine articulated in NLRB v. Katz.”⁷

In order to ensure a uniform approach regarding allegations involving the unilateral cessation of dues-checkoff arrangements following contract expiration, in both right-to-work and non-right-to-work states, Regional Offices should contact the Division of Advice if they receive charges that contain such allegations.

/s/
R. A. S.

cc: NLRBU
Release to the Public

MEMORANDUM OM 11-40

⁵ Local Joint Executive Board of Las Vegas v. NLRB, 309 F.3d 578, 584-85 (9th Cir. 2002), vacating and remanding 331 NLRB 665 (2000); Local Joint Executive Board of Las Vegas v. NLRB, 540 F.2d 1072, 1082 (9th Cir. 2008), vacating and remanding 351 NLRB 504 (2007).

⁶ 355 NLRB No. 154 (2000).

⁷ 355 NLRB No. 154, slip op. at 2.